

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

SYSKO FOOD SERVICES OF SEATTLE, INC.

Employer-Petitioner

and

Case 19-UC-724

TEAMSTERS LOCAL 117, affiliated with the
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Union

SYSKO FOOD SERVICES, INC.

Employer-Petitioner

and

Case 19-UC-725

TEAMSTERS LOCAL 690, affiliated with the
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Union

**REGIONAL DIRECTOR'S DECISION AND
ORDER DISMISSING PETITIONS**

Pursuant to Section 9(b) of the National Labor Relations Act, as amended, the above Employer-Petitioners filed separate petitions seeking to clarify the placement of certain employees because Teamsters Local 117, affiliated with the International Brotherhood of Teamsters, AFL-CIO ("Local 117") allegedly seeks to represent those employees, who are allegedly represented by Teamsters Local 690, affiliated with the International Brotherhood of Teamsters, AFL-CIO ("Local 690"). On April 5, 2005, I issued an Order consolidating the two cases and an Order to Show Cause inviting the parties to file a written statement with me regarding why the two petitions should not be dismissed. In response, both Employer-Petitioners filed briefs with me accompanied by numerous documents in which they argue that the Region must hold a hearing on the petitions to resolve the alleged competing representational claims of Local 117 and Local 690. Having carefully considered the briefs and supporting documents in light of the applicable law, I find that there is insufficient evidence to establish that there are competing representational claims or any unit placement issues to be resolved by the pending unit clarification petitions. Accordingly, I find that the instant petitions should be dismissed.

BACKGROUND INFORMATION

Sysco Food Services of Seattle, Inc. ("SFSS") is engaged in the wholesale warehousing and delivery of food and restaurant products out of its facility in Kent, Washington. SFSS has serviced retail customers throughout the Pacific Northwest, including those located in eastern Washington and northern Idaho, from its Kent facility. For many years Local 117 has represented a bargaining unit of approximately 260 warehouse employees and drivers employed by SFSS out of its Kent facility. Local 117 and SFSS are parties to a collective-bargaining agreement covering those employees that is effective from September 1, 2001 through September 1, 2006.

At some point in 2004 SFSS informed Local 117 that Sysco Food Services, Inc. ("SFS")¹ would be opening a facility in Post Falls, Idaho in 2005 and that it would be servicing a number of clients in eastern Washington and northern Idaho that SFS had previously handled. SFSS also informed Local 117 that it would cease handling most of the clients in eastern Washington and northern Idaho, and would lay off approximately 33 drivers, when SFS commenced operations in Post Falls. Around December 8, 2004, Local 117 requested that SFSS engage in bargaining over the effects of its decision to cease most of its operations in eastern Washington and northern Idaho and lay off the drivers. In mid January 2005² the parties agreed to have the first effects-bargaining session on February 13. SFSS also informed Local 117 that the Post Falls operation would probably commence in April.

On January 20 Local 117 sent a letter to SFSS stating that it had been advised that SFS would be hiring employees for its Post Falls facility imminently and demanded that no hiring occur until SFS had completed its effects bargaining with it and had complied with Article 20 (Unit Work Preservation) of the parties' collective-bargaining agreement. That Article provides as follows:

- 20.01 The work of the Local Unions [sic] Bargaining Unit must be performed only by employees belonging to said unit.
- 20.02 The Employer must not make unilateral changes in wages, hours, or other terms and conditions of employment of unit employees, or subcontract bargaining unit work without prior good-faith consultation and bargaining with the Union, concerning the effects of such changes.

On January 21 Local 117 filed a lawsuit in the United States District Court for the Western District of Washington alleging that SFSS had breached the collective-bargaining agreement and requesting injunctive relief to prevent SFSS from ceasing its operations in eastern Washington and northern Idaho and to prevent Sysco Corporation and SFS from commencing operations in Post Falls and hiring any employees there. Local 117 filed an amended lawsuit on February 2. The lawsuit alleges, *inter alia*, that SFSS and SFS and Sysco Corporation are alter ego employers. That lawsuit is still pending before the court.

Meanwhile, in the fall of 2004 a representative of SFS informed Local 690 that it was prepared to voluntarily recognize Local 690 as the collective-bargaining representative of all drivers and warehouse employees hired by SFS at its Post Falls facility provided that Local 690

¹ SFSS and SFS are wholly owned by Sysco Corporation, which is based in Houston, Texas.

² All dates hereafter occurred in 2005 unless otherwise indicated.

had jurisdiction over that group of employees. The Joint Council of Teamsters No. 28, of which both Local 117 and Local 690 are members, issued a letter in late November 24, 2004 stating that Local 690 had exclusive jurisdiction over the drivers and warehouse employees that would be hired by SFS. Local 690 and SFS engaged in negotiations over the terms and conditions of employment for the SFS warehouse employees and drivers and reached two separate agreements covering the drivers and warehouse employees, respectively. Although Local 690 signed the agreement covering the SFS drivers, it has refused to sign the agreement covering the warehouse employees.³

On February 22, SFSS filed a unit clarification petition alleging that Local 117 was seeking to include in its bargaining unit the drivers and warehouse employees employed by SFS and represented by Local 690. The petition sought to exclude the drivers and warehouse employees employed at Post Falls from Local 117's bargaining unit. On March 2, Local 117 filed a letter with me disclaiming any interest in representing the drivers and warehouse employees employed by SFS at its facility in Post Falls. On March 8 SFSS withdrew its unit clarification petition. On March 16, however, SFSS filed the instant petition in Case 19-UC-724, and on March 17 SFS filed the instant petition in Case 19-UC-725, allegedly because Local 117 was taking action inconsistent with its disclaimer of interest. Both petitions claim that Local 117 is seeking to represent the drivers and warehouse employees employed at the Post Falls facility and seek to exclude those employees from the bargaining unit represented by Local 117.

On April 4 SFS opened its Post Falls facility and commenced operations. SFSS ceased most of its operations in eastern Washington and northern Idaho and laid off the drivers who were domiciled in and serviced those areas.

ANALYSIS

The issue is whether unit clarification is proper under the circumstances presented. The Board has described the purpose of unit clarification proceedings in *Union Electric Co.*, 217 NLRB 666, 667 (1975), as follows:

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification, which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category --excluded or included--that they occupied in the past.

The Employer-Petitioners argue here that unit clarification is appropriate to resolve the alleged ambiguity concerning the unit placement of the drivers and warehouse employees. In this regard, they assert that although Local 690 has claimed representation of the warehouse employees and drivers employed by SFS out of northern Idaho, Local 117 has also claimed representation of these same employees in the historical unit that it has represented based in Kent, Washington.

³ SFS filed three unfair labor practice charges concerning or related to Local 690's refusal to execute that agreement. Those charges are currently pending before this Region.

I find that the documents provided fail to establish that Local 117 is seeking to represent the warehouse employees and drivers in question. Initially, I note that Local 117 has filed a written document disclaiming any interest in representing the employees in question. Although the Employer-Petitioners assert that Local 117 has taken action inconsistent with its disclaimer by alleging in its lawsuit that SFS and SFSS are alter egos, I disagree. My review of the lawsuit's amended complaint reveals that Local 117 has alleged a work dispute claim, rather than a representational claim. Indeed, Local 117 in its amended complaint relies on articles in its collective-bargaining agreement with SFSS that require unit work to be performed only by the Local 117 bargaining unit. Local 117's allegation that SFS is an alter ego of SFSS is a necessary component of its contractual claim to bind SFS and thereby prevent it from having its employees perform the bargaining unit work that Local 117 is claiming for its unit employees.

Although the Employer-Petitioners assert that the amended complaint's allegation that SFS and SFSS are alter egos necessarily establishes that Local 117 has a representational claim, the Board has rejected a similar contention in *Coatings Application Co.*, 307 NLRB 806 (1992). In that case, the union had a collective-bargaining agreement with the employer (Coatings of Indiana) and claimed that work being performed by employees of a related company (Coatings Louisville) of the employer was bargaining unit work. The union filed a grievance and alleged that the two employers were a single employer. In response, the employer filed a unit clarification petition with the Board claiming that the union was seeking to represent the Coatings Louisville employees performing the disputed work and seeking to clarify the unit to exclude the Coatings Louisville employees. The Board dismissed the petition, finding that a work dispute had precipitated the union's grievance and that there was no evidence, as opposed to speculation, that the union had a representational objective with respect to the Coatings Louisville employees. Specifically rejecting the employer's contention that the union's allegation that Coatings of Indiana and Coatings of Louisville were single employers revealed that the union's claim was representational, the Board stated:

the Union's single-employer contention, in the factual context of this case, appears to show no more than its desire to establish that the Employer controlling the assignment of the Shoals' work --Coatings Louisville—is the same employer with whom the Union has a collective-bargaining agreement—Coatings Indiana, and that thus, by contractual obligation, the work must be assigned to employees represented by the Union. This is consistent with the Union's essential claim, which clearly appears to raise a work dispute. In view of the scant evidence before us concerning the nature of the Union's contractual grievance, the single-employer contention does not establish that this dispute is representational.

Id. at 806 fn. 1. For similar reasons, I find that the alter ego contention in the Union's lawsuit does not alone establish that Local 117 has a representational objective.

I further find that the Employer-Petitioners' reliance on *Asbestos Carting Corp.*, 302 NLRB 197 (1991), to show that I must process the unit clarifications petitions here to be misplaced. In that case, the Board found that it was proper to process the employer's RM petition because it found that the union had a representational objective based on its allegations of alter ego/single employer status *and accretion*. As the union there was seeking to accrete the employees in question, the dispute clearly raised a representational issue and the Board properly considered the issues raised by the petition. By contrast, there is no evidence in the present case that Local 117 is attempting to accrete any employees to its unit.

In sum, there is no evidence to support the claim that Local 117 is seeking to represent the drivers and warehouse employees now employed by SFS, and there is no other ambiguity with respect to the unit placement of the drivers and warehouse employees in question.

CONCLUSION

On the basis of the foregoing, I find that there is insufficient evidence to establish that Local 117 is seeking to represent the employees that the Employer-Petitioners seek to exclude by their petitions from the unit historically represented by Local 117, or that there is any question or ambiguity regarding the unit placement of those employees. Accordingly, I shall dismiss the petitions.

ORDER

The petitions are dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, D.C. by 5 p.m., EST on June 2, 2005. The request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlr.gov.

DATED at Seattle, Washington this 19th day of May 2005.

/s/ Richard L. Ahearn
Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
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